

**SECTION 504
of the
Rehabilitation Act
of 1973,**

AIMS and Stanford 9



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SECTION 504

What is Section 504?

Section 504 of the Rehabilitation Act of 1973 is a civil rights law that prohibits discrimination against individuals with disabilities in programs and activities that receive federal financial assistance. Section 504 covers eligible students, employees, and other individuals with disabilities. It is reinforced with, and extended to, private organizations that serve the public by the Americans with Disabilities Act of 1990.

Who is eligible under Section 504?

To be eligible, an individual must:

1. have a mental or physical impairment which substantially limits one or more of life's major activities. Major life activities include functions such as caring for ones' self, walking, seeing, speaking, learning, performing manual tasks, working, hearing or breathing.

A student must qualify under number one to be eligible for free and appropriate public education ("FAPE"), typically in the form of an accommodation plan.

2. have a record of such an impairment; or
3. be regarded as having such an impairment.

Each of these alternative definitions (2 and 3 above) become factors only if discrimination has occurred because of the record or perception, thus preventing exclusion rather than requiring services.

What is an accommodation?

Accommodations are provisions made in *how* a student accesses and demonstrates learning. These do not substantially change the instructional level, the content, or the performance criteria. The changes are made in order to provide a student equal access to learning and equal opportunity to demonstrate what is known.

What does "mental or physical impairment" mean in this context?

It means a recognized physical condition, such as in Merck's Manual, or mental condition, such as in DSM-IV. For example, asthma and attention deficit disorder qualify as physical and mental impairments under Section 504 and, if either impairment substantially limits a major life activity, such as learning, a student will be eligible for accommodations under Section 504. On the other hand, linguistic, cultural, and economic conditions do not qualify. Congress has expressly excluded sexual disorders and current drug abuse.

What is meant by the term "major life activity?"

The courts have interpreted "major life activities" as global human functions, not subsets thereof. For example, learning is a major life activity. In contrast, spelling, mathematics, and organizational skills are subsets of learning. Similarly, walking is a major life activity, whereas

running, jumping, crawling, and hopping do not themselves qualify, as they are subsets of the global locomotor activity of walking.

What does “substantially limit” mean?

Although the legislation and regulations lack a precise definition, the courts have made clear that the frame of reference is the individual's performance in relation to that of the general, or national population, and that the determination is with, not without, the effect of mitigating measures, such as medication. For a student, where the identified impairment limits the major life activity of learning, the Section 504 team should consider various sources of evidence, not limited to any one sub-area, to determine whether, in comparison to the average student in the national population of the same age and taking into consideration the net effect of mitigating measures, such as measurement, the individual child's overall performance is substantially, not just moderately, limited.

What are some of the differences between Special Education (PL94-142) and Section 504?

Section 504	IDEA
Prohibits discrimination	Requires special education
Unfunded – local responsibility	Funded partially at the federal level - primarily state enforcement
Relatively broad definition of a disability, extending beyond students, learning, and special education.	Relatively narrow definition of disability, based on at least 1 of 13 specified student learning classifications and the need for special education
Streamlined prescription for FAPE, typically in the form of an accommodation plan	Detailed prescription for IEP process and product
Only specified parental rights are for procedural safeguards, such as notice, records review, and filing for due process	Specified role for parents as partners in the eligibility and IEP process
Agency enforcement – Office for Civil Rights (OCR)	Agency enforcement – Office of Special Education Programs (OSEP) and state education agency (SEA)

Are students referred, but either not qualifying or exiting from IDEA special education, eligible under Section 504?

Not automatically or even often. The 504 team must determine that the child has a physical or mental impairment that limits a major life activity to a substantial extent. Although the determination is done on an individual basis, if the child does not need special education services, s/he in many cases will not have a substantial impairment in learning.

Does Section 504 require an IEP for eligible students?

No. For an IDEA eligible child, an IEP will serve for the FAPE requirements of both Section 504 and IDEA. For a child eligible solely under Section 504, not the IDEA, an IEP is not required; rather, an accommodation plan is sufficient.

Should a Section 504 Accommodation Plan specify out-of-level testing for a student?

No. Out-of-level testing is a modification or, in Section 504 terms, a fundamental alteration. Students with disabilities serious enough to require out-of-level testing should be referred for evaluation under IDEA for IEP services.

May a Section 504 Team decide that a modification is appropriate for a student?

No, not under the policies of the Department of Education. Modifications are fundamental alterations in *what* a student is expected to learn and to demonstrate and, thus, are not allowed on AIMS or the Stanford 9 for students with a Section 504 Accommodation Plan.

May a Section 504 Plan specify the use of a calculator as an adaptation?

No, at least not for the mathematics calculation items for statewide testing. The reasons are twofold. First, such use would be a modification, or fundamental alteration, not an accommodation. Second, if the student has a severe problem with mathematics calculation, s/he should be referred for evaluation under the IDEA category of "specific learning disability," which provides for possible eligibility in terms of this subset of learning. For Section 504, any problems with mathematics calculation will likely be offset by relative strengths in other areas such that the child's impairment does not meet the substantially limiting requirement in terms of the major life activity of learning.

Are Limited English Proficient (LEP) students eligible for a Section 504 Accommodation Plan?

Yes, but only based on requisite mental or physical impairments, not differences in language or culture. LEP students are eligible for accommodations under Section 504 only if they have a mental or physical impairment that substantially limits a major life activity, such as learning or breathing. Title VI, not Section 504, is the civil rights act that applies to LEP students who do not meet these criteria.

Are environmental and/or cultural factors sufficient justification for accommodations under Section 504?

No. Under Section 504, the focus is in terms of mental or physical impairments, not environmental and cultural factors.

On page one, you state that to be eligible for a Section 504 Plan, an individual must have a mental or physical impairment which substantially limits one or more of life's major activities and be regarded as having such an impairment. What about the "record of" and "regarded as" alternatives in the definition of disability under Section 504?

The Office for Civil Rights (OCR) has made clear that the exclusive avenue for the FAPE entitlement, as documented in an Accommodation Plan, under Section 504 is the first prong of the definition. The other two prongs, which apply primarily to employees, prevent exclusion rather than require FAPE.

What advice can the Department of Education offer regarding AIMS and Section 504?

Remember that there must be documentation of an impairment that truly limits a student's ability. The documentation of a disability should verify a mental or physical impairment, the major life activity, and the substantial limitation of the identified activity.

Second, where the individual student meets all three of these required criteria, there should be documentation that the identified disability necessitates the specified testing accommodations and that these adaptations do not constitute fundamental alterations in what is being tested.

Is this as complicated as it sounds?

Not at all. The procedures for a Section 504 plan for a student who exclusively meets this three-part definition of disability are similar to those for an IEP for a student who meets the two-part definition (i.e., meeting the criteria for one or more of the 13 classifications of impairment and needing special education services of disability under IDEA). The first issue is eligibility, as determined by a knowledgeable team, and the second issue, only for eligible children, is the FAPE entitlement, as also determined by a knowledgeable team. Neither process entitles the child to accommodations. Moreover, Section 504 provides a limit to the required adaptations.

Can you provide a list of adaptations that are acceptable and not unacceptable?

Yes, but please remember that they are only illustrative, not absolute or complete.

ADAPTATIONS	
Examples of adaptations that are acceptable for Section 504 Accommodation Plans.	Examples of adaptations that are unacceptable for Section 504 Accommodation Plans.
Accommodations are changes that do not alter or fundamentally lower the standards or expectations of the test.	Modifications reflect changes in the test administration that affect standardization and, thus, the comparability of scores and may also involve substantial changes in what a student is expected to learn and to demonstrate.
Reading test directions	Out-of-level testing
Provide special lighting	Use of a spell checker
Secure paper to work area with tape or magnet	Use of a calculator
Provide adaptive or special furniture	Change in the content of the test
Administer test in a separate location	Change the validated passing grade or standard
Administer test in a small group	
Provide a slant board or a wedge	
Provide templates to reduce visual print	
Provide auditory amplification devices	
Sign oral directions using exact translation	
Provide scribe/tape recorder to record answers	
Provide large-diameter pencil	
Provide a word processor	
Provide headsets to muffle noise	
Pause during speaking	

Questions regarding the administration of AIMS and the Stanford 9 to students eligible for a Section 504 Accommodation Plan may be addressed to Paul Young at pyoung@ade.az.gov or 602-542-5031.